

2009 Session

## Exhibit 3

**This exhibit is a booklet and it cannot be scanned therefore only the cover and table of content has been scanned to aid you in your research.**

**The original exhibit is on file at the Montana Historical Society and may be viewed there.**

**Montana Historical Society  
Archives, 225 N. Roberts, Helena,  
MT 59620-1201  
Phone (406) 444-4774.**

Scanning by: Susie Hamilton

# Montana 61<sup>st</sup> Legislative Assembly

## House Judiciary Committee

Documents in Support of SB 221,  
*"an act including companion animal hoarding in the offense of cruelty to animals"*

### Cascade County Hoarding Case

IN THE SUPREME COURT OF THE STATE OF MONTANA  
Cause No. DA-07-0407  
LINDA METZGER, individually and on behalf of the West McIver Road Neighbors,  
an Association of Concerned Citizens,  
Plaintiffs and Respondents

vs.

PAM POLEJEWSKI and MICHAEL HANSON,  
Defendants and Appellants

#### **RESPONDENTS' ANSWER BRIEF**

References Cause No. BDV-05-1007 Petition for Animal Welfare Hearing  
References Cause No. TK-2005-3824 Order Revoking Suspended Sentence

IN THE SUPREME COURT OF THE OF THE STATE OF MONTANA  
APPEAL FROM: District Court of the Eighth Judicial District, In and For the County of Cascade,  
Cause No. BDV 2005-1147, Honorable Julie Macek, Presiding Judge,

#### **MEMORANDUM OPINION**

MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY  
No. CDC-05-624

STATE OF MONTANA,  
Plaintiff,

vs.

PAMELA POLEJEWSKI,  
Defendant

#### **HEARING RE: CHANGE OF PLEA/SENTENCE**

Submitted by Linda Metzger  
March 19, 2009

**Metzger et al vs Polejewski & Hanson**

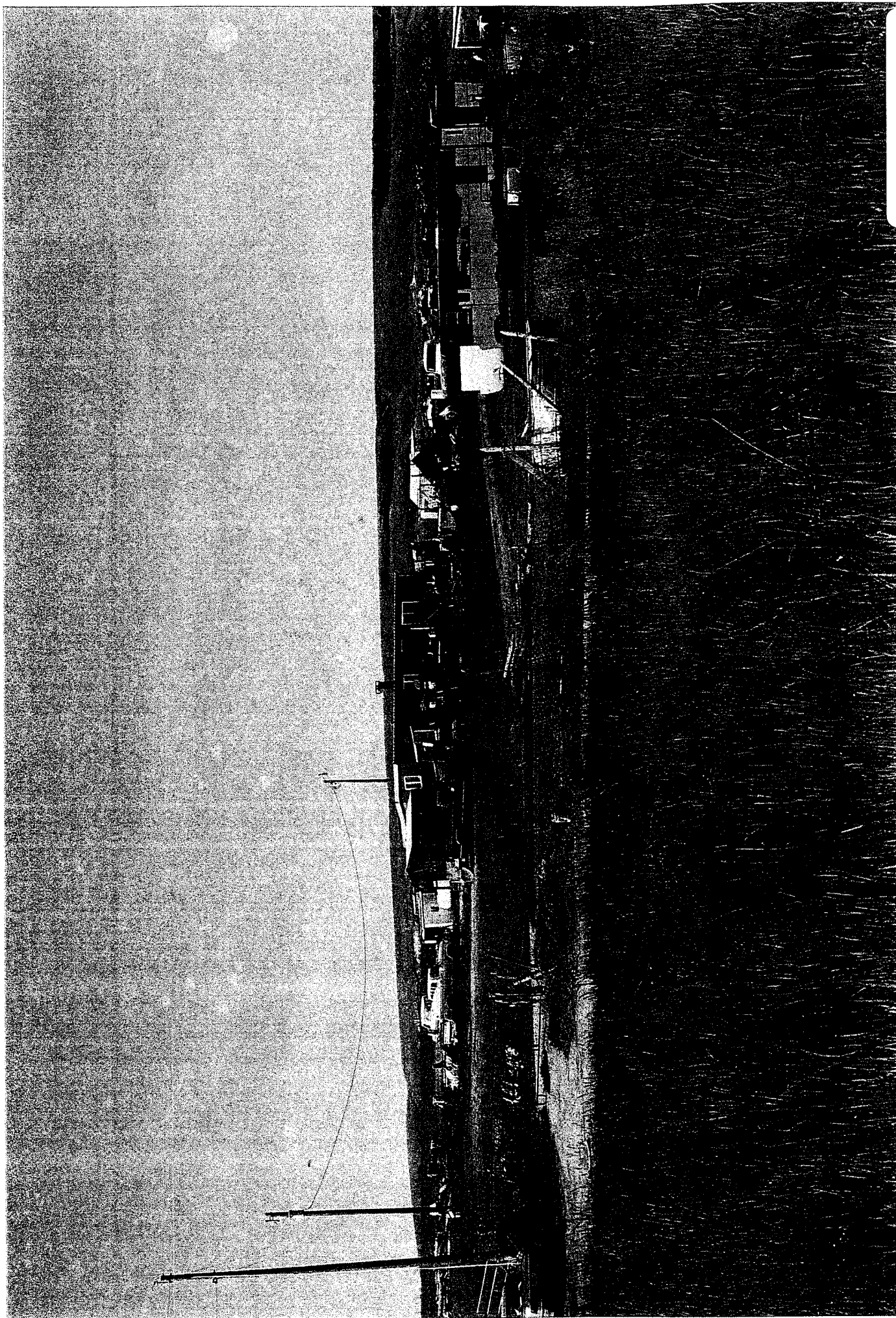
**Cause No. DA-07-0407**

**Duplicate of Deposition Original**

**Cascade County Sheriff Videos Case #055356 Year 2005**

**77 Wexford Lane Great Falls MT**

**Residence of Pamela Jo Polejewski and Michael Lee Hanson**



**DVD COUNTER INDEX**

**Cascade County Sheriff Videos Case #055356 Year 2005 77 Wexford Lane Great Falls MT Residence of Pamela Jo Polejewski and Michael Lee Hanson**

00:01:12	weed-filled dog pens
00:02:00	hole in trailer to makeshift dog pen, no water bowls
00:02:50	junk red trailer with makeshift dog pen
00:03:40	large moldy hay bale and horses
00:03:50	makeshift dog pens attached to house porch & dogs
00:03:56	large pile of raw slaughter bones & and fat on ground
00:06:49	makeshift pig pen
00:08:14	bare mud horse yard & horses
00:09:10	horses with ribs showing
00:10:15	horse with ribs showing & wasted flanks
00:12:32	dilapidated horse fence
00:13:10	makeshift dog pen & shelters
00:13:25	horse nibbling weeds in mud
00:13:38	injured, crippled horse with withered leg & badly foundered foot & hoof (later destroyed under Order)
00:15:29	horse troughs west of property line onto Worsley property & tarps/tin on Worsley fence as wind block without permission
00:16:43	trash can of rotted old slaughter bones
00:19:56	crude makeshift dog shelters
00:20:35	snow fence dog pens, large slaughter bones on ground
00:21:31	straw bale dog shelter

**DVD COUNTER INDEX**

**Cascade County Sheriff Videos Case #055356 Year 2005 77 Wexford Lane Great Falls MT Residence of Pamela Jo Polejewski and Michael Lee Hanson**

00:22:52	weedy dog pen & large slaughter bones on ground
00:23:31	several unknown carcass rib cages by dog pens
00:24:13	dog chewing old large slaughter bone
00:25:28	dog pan containing debris & bones in shallow water
00:25:38	Pamela Polejewski & Michael Hanson sorting & moving debris at red trailer south of house
00:27:25	large old slaughter bones on ground, one of several piles & locations
00:28:34	rotting horned cow heads wired to fence
00:28:34	unknown carcass rib cage(s) under blue tarp on ground
00:29:08	hole hacked through trailer wall for dog pen opening
00:29:38	door left open to makeshift dog pen
00:30:01	inside filthy dog trailer
00:30:11	walls of red trailer hacked open, large slaughter bone on ground in plywood pen
00:31:02	dogs inside red trailer on wet filthy floor
00:31:11	collapsed straw makeshift dog shelter and pen outside red trailer
00:31:56	debris, junk, derelict cars south of residence house
00:32:45	hacked openings on boxes for dog shelters
00:33:25	makeshift corrugated metal & straw dog shelters
00:33:46	large square bin of old slaughter spines & large bones

**DVD COUNTER INDEX**

**Cascade County Sheriff Videos Case #055356 Year 2005 77 Wexford  
Lane Great Falls MT Residence of Pamela Jo Polejewski and Michael Lee  
Hanson**

00:35:38	injured dachshund with protruding spine alternately holding up rear legs
00:36:51	filthy dog enclosure with terrier mix
00:41:55	dogs in pen with carcass bones, hole in building for shelter
00:42:45	shattered & cracked dog house, open to rain, filthy blanket & straw
00:47:05	dachshund mix chewing on large old slaughter spinal column
00:47:30	multiple dogs, puppies, & cats in residence house
00:50:11	dead stiff cat in human-occupied room in house, dog picks it up as toy or possessively
00:50:35	dogs under trailer in opening in skirting for shelter
00:52:30	west view of makeshift pens on north side of residence house porch with dogs
00:52:46	Pamela Polejewski talking to CCSO Deputy on 77 Wexford property 20 August 2005, Michael Hanson in background listening. Thereafter various of Polejewski and dogs, tape quality poor with dropouts
01:15:00	tape resumes normally at 77 Wexford, dogs in pens
01:22:00	videocam on, lying in a seat of a vehicle
01:27:00	black screen
01:51:00	more seat
01:55:00	white noise/snow, no picture
01:56:00	tape DVD ends
WMRNCCSODVDIndex13Mar2007	

IN THE SUPREME COURT OF THE STATE OF MONTANA

Cause No. DA-07-0407

**FILED**

LINDA METZGER, individually and on  
behalf of the West McIver Road Neighbors  
an Association of Concerned Citizens,

FEB 11 2008

Ed Smith

CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Plaintiffs and Respondents,  
vs.

PAM POLEJEWSKI and MICHAEL HANSON,

Defendants and Appellant.

**RESPONDENTS' ANSWER BRIEF**

**APPEARANCES:**

Pamela Polejewski  
Michael Hanson  
P.O. Box 668  
400 Blue Mountain Road  
Libby, MT 59923  
Appellants

Patrick F. Flaherty  
Attorney at Law  
1026 First Avenue South  
P.O. Box 1968  
Great Falls, MT 59403  
Attorney for Respondents

**STATE LAW LIBRARY**

FEB 28 2008

**OF MONTANA**



## TABLE OF CONTENTS

TABLE OF AUTHORITY . . . . .	iii
STATEMENT OF ISSUES . . . . .	1
STATEMENT OF THE CASE . . . . .	1
STATEMENT OF FACTS . . . . .	1
STANDARD OF REVIEW . . . . .	7
SUMMARY OF ARGUMENT . . . . .	7
ARGUMENT I: THE DVD (VIDEO) THAT THE CASCADE COUNTY SHERIFF'S OFFICE TOOK OF THE DEFENDANT'S PROPERTY WAS PROPERLY ADMITTED INTO EVIDENCE AND CONSIDERED BY THE COURT . . . . .	8
ARGUMENT II: THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION WHEN IT GRANTED SUMMARY JUDGMENT FOR THE PLAINTIFFS . . . . .	11
A. The Judge erred by including Pamela Polejewski in the Order enjoining the nuisance by virtue of failure to give notice to Pamela Polejewski and/or the Bankruptcy filing . . . . .	11
B. The claim that Judge Macek is biased and should have recused herself is without merit and contrary to the law. . . . .	14
C. The depositions were properly admitted into evidence. . . . .	15
D. The DVD is helpful . . . . .	16
E. The Appellants were not denied any of their rights . . . . .	16
F. The boarding facility excuse and hoarding excuse . . . . .	17
G. Personal Diatribe is irrelevant . . . . .	18
H. The argument that Judge Macek's Decision is in error because there was no summary motion filed by the Appellants is contradicted in the record . . . . .	18
CONCLUSION . . . . .	19
CERTIFICATION OF COMPLIANCE . . . . .	20
CERTIFICATE OF MAILING . . . . .	20

## TABLE OF AUTHORITY

### Cases:

*Watson v. Dundas*, 2006 MT 104, ¶ 16, 322 Mont. 164, ¶ 16,  
136 P.3d 973, ¶ 16. . . . . 7

*Wood v. Old Trapper Taxi*, 286 Mont. 18, 23, 952 P.2d 1375,  
1379 (Mont. 1997). . . . . 7

### Statutes:

§ 3-1-805, M.C.A. . . . . 15

§ 27-30-101 (1), M.C.A. . . . . 5, 17

§ 27-30-102 M.C.A. . . . . 6, 17

### Other:

11 U.S.C. § 362. . . . . 8

Montana Rules of Civil Procedure Rule 56(c). . . . . 7, 17